THE AMERICAN LAW REGISTER

FOUNDED 1852.

UNIVERSITY OF PENNSYLVANIA

DEPARTMENT OF LAW

VOL. { 47 O. S. / 38 N. S. } APRIL, 1899. No. 4.

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It is a remarkable fact that during the one hundred and eleven years since the adoption of the Constitution, the Supreme Court of the United States has been presided over by but seven men: John Jay, John Routledge, Oliver Ellsworth, John Marshall, Roger Brooke Taney, Salmon P. Chase, Morrison R. Waite and Melville W. Fuller.

All of these were men of force, of learning, and exalted virtue, but the fame of some of them was won elsewhere than in the law.

Jay, Ellsworth, Routledge were among the founders of the Republic. Chase's reputation is based as much, perhaps, upon his consummate knowledge of finance and his ability in managing the Treasury during our great Civil War, as upon his decisions as a judge.

Of Waite it may be sufficient to say that he held the scales of justice with an even and a steady hand and won the entire respect of his fellow-citizens and of the profession which he adorned, during his entire term.

*A paper read before the Law School of Dickinson College, March 10, 1899.

The record of Chief Justice Fuller is not made up, but it may be well believed that he will worthily maintain the traditions of his office. The two men whose fame rests exclusively upon their performance of duty as Chief Justice of the United States, whose names come spontaneously to the mind whenever that great tribunal is mentioned, are Marshall and Taney. Marshall had been a soldier of the Revolutionary War, a distinguished member of Congress and a diplomatist before he was appointed to the Chief Justiceship by President Washington, whose historian he was. As Lord Mansfield may be said to have been the father of modern commercial law, as the names of Erskine and Scarlett will always be associated with the particular combination of learning and practical knowledge of human nature joined to the art of expression, which constitutes what is known as the jury lawyer, as the name of Lord Selborne will go down to history as the man who moulded that great measure of legal reform, the Judicature Act in England, so the name of Marshall will be forever known as the creator of constitutional law in the United States.

All written constitutions are codes; and because of the infirmity of human language, it is not possible to formulate any code in the interpretation of which controversies may not arise.

To you, as students of law, this is a trueism; and the familiar example of the Statute of Frauds, every line of which is said to have cost a subsidy to interpret, is cited to point the moral. It could not be expected that the Constitution of the United States would be free from obscurity, lucid as the language is; it could not be expected that the minds of those who formed it could have foreseen every case to which it was likely to be applied, precient as their minds were; and so it came to pass that, when in 1789 the discordant governments of the different states of the confederacy became a nation, and as years passed the young Republic grew, questions continually arose requiring an interpretation of the Constitution, and the Supreme Court was the only tribunal whose judgment upon them was final.

Under the masterful leadership of Marshall, who penned many of its decisions and who gave tone to the entire court, a body of constitutional law had been formed before his death in 1835, the importance of which it is impossible to measure. Its far-reaching effects were to consolidate the Republic, to give to the central government those attributes of sovereignty, without which it would have been impossible for it to exist, and to create a class of constitutional thinkers whose influence will be felt so long as the nation endures.

It is of Marshall's great successor, Chief Justice Taney, I intend to speak to you. I have been led to think that the story of his career would be of special interest because he was a graduate, and so far as an exalted position could make him, the greatest graduate of this ancient college. It will be for you to decide, when you have measured his character by his works, whether it cannot be said of him also that he was in morals equally as great as in intellect.

I approach the consideration of Chief Justice Taney's career with some hesitation, first, because I am in no way sure that I cast any additional light upon it, or illustrate it by facts that have not been already made known. His life has been written by his friend Samuel Tyler. His decisions have been carefully reviewed by that eminent lawyer, George W. Biddle, of the Philadelphia Bar, whose well-rounded career was recently closed, and an eloquent and able paper was read before the American Bar Association by Clarkson N. Potter of New York at the Session of 1882, which did full justice to his character and attainments. Besides this literature, we have Flanders and Van Santvoord's lives, and the brief, but able sketch in Hampton L. Carson's History of the Supreme Court of the United States.

Notwithstanding the fact that in his early manhood and in his old age, Taney's name was the very storm centre of heated controversy; and notwithstanding all that has been written of him, I doubt whether sufficient interest has been felt in these recent years to study his career, and my belief in its importance, by reason of his attitude on great constitutional questions, one of which required a bloody war for its final settle-

ment, together with the appropriateness, as it seemed to me, of this subject in an address before the Law School of Dickinson College, must be my excuse, if any be needed, for the selection I have made.

On the 17th of March, 1777, in Calvert County in the State of Maryland, Taney was born, the son of Michael of that name, a land-owner on the Patuxent River. His forefathers were among the early emigrants to Maryland. They were Roman Catholics. Although we are accustomed to associate the communities that settled Maryland and Pennsylvania with broad religious toleration, and although such was the intention of the founders of both communities, yet in Maryland, after the accession of William and Mary, severe penal laws were enacted, and every Roman Catholic was prohibited from teaching a school in the province. The education of children in this faith, therefore, was obtained with difficulty either abroad or privately in their families. So it happened that the father had graduated from the famous Jesuits' College of St. Omer's.

He married, in the year of 1770, Monica Brooke, the daughter of another planter of Maryland. Roger Brooke was one of seven children of this union, being the third child and the second son.

The Revolution having removed all difficulty on the score of religion and the constitution in the State of Maryland, in 1776, having placed all persons professing the Christian religion on an equal footing, the child was sent to a public school and then put under the charge of a private tutor, and thus prepared to enter Dickinson College. In his autobiography he describes his journey, after the spring vacation in 1792, to reach Carlisle:

"We embarked on board of one of the schooners employed in transporting produce and goods between the Patuxent River and Baltimore, and, owing to unfavorable winds, it was a week before we reached our port of destination; and, as there was no stage or any other public conveyance between Baltimore and Carlisle, we were obliged to stay at an inn until we could find a wagon returning to Carlisle, and not too heavily laden to take our trunks and allow us occasionally to ride in it. This we at length accom-

plished, and in that way proceeded to Carlisle, and arrived safely, making the whole journey from our homes in about a fortnight."

It is more than a century now since Taney graduated with the degree of Bachelor of Arts in the fall of 1795. During the period of his studentship he went home but twice, by reason of the difficulties of the journey, walking all the way from Carlisle to Baltimore, a distance of eighty-five miles, in a little over two days. He says of his college life that, taken altogether, it was a pleasant one. He boarded with James McCormick, the professor of mathematics, to whose kindness and patience he pays tribute. He speaks, too, of Dr. Nisbet, "whose share of the college duties was ethics, logic, metaphysics and criticism." Also of Dr. Robert Davidson, who lectured on history, natural philosophy and geography, and of Charles Huston, professor of Latin and Greek, the last named becoming a distinguished jurist himself and one of the judges of the Supreme Court of Pennsylvania.

Upon his graduation, young Taney was the valedictorian of his class. He speaks of his effort in a way that indicates that it was a severe trial to him; and that you may have some notion of what a commencement was in those days, I shall quote again from his autobiography, a fragment of which, unfortunately incomplete, may be found fn Tyler's Life:

"The commencement was held in a large Presbyterian church, in which Dr. Nisbet and Dr. Davidson preached alternately. A large platform of unplaned plank was erected in this church in front of the pulpit and touching it, and on a level with its floor. From this platform the graduate spoke, without even, I think, a single rail on which he could rest his hand while speaking. In front of him was a crowded audience of ladies and gentlemen; behind him, on the right, sat the professors and trustees in the segment of the circle, and on the left, in like order, sat the graduates who were to speak after him; and in the pulpit, concealed from public view, sat some fellow-student, with the oration in his hand, to prompt the speaker if his memory should fail him. I evidently could not have been very vain of my oration, for I never called on my prompter for it, and have never seen it since it was delivered, nor do I know what became of it. I sat on this platform, while oration after oration was spoken, awaiting my turn, thinking over what I had to say, and trying to muster up courage enough to speak it with composure. But I was sadly frightened,

and trembled in every limb, and my voice was husky and unmanageable. I was sensible of all this—much mortified by it—and my feeling of mortification made matters worse. Fortunately, my speech had been so well committed to memory, that I went through without the aid of the prompter. But the pathos of leave-taking from the professors and my classmates, which had been so carefully worked out in the written oration, was, I doubt not, spoiled by the embarrassment under which it was delivered."

This recital gives an impression of the highly nervous temperament of the future Chief Justice, and of the strength of will he must have had to have overcome it as he did; for notwithstanding his long life, for the most part amid the full blaze of public criticism, he was troubled with trepidation in public speaking to the last. In the spring of 1796 Mr. Taney entered the office of Judge Chase, of the General Court of Maryland, at Annapolis, that being the place, he says

"from the character of the judges of the General Court, of the bar who attended it, and the business transacted in it . . . of all others in the state, where a man should study law, if he expected to attain eminence in his profession."

His student life was one of unremitting labor. Each man must choose for himself that mental regimen which seems best fitted for his advancement, and I, for one, do not advise a student to take the career of any man, no matter how great he may be, and set before him his rules with the determination to adhere to them slavishly, He must consider differences in temperament, time, place and general surroundings, but no one will regret concentration of purpose and steady work to the limit of his capacity; and the example of men like Taney is well calculated to inspire them. Let me quote again his own views upon what he did, and his advice to one situated as he was:

"I determined not to go into society until I had completed my studies, and I adhered to that determination. In the midst of the highly polished and educated society for which that city was at that time distinguished, I never visited in any family, and respectfully declined the kind and hospitable invitations I received. I associated only with the students, and studied closely. I have for weeks together read law twelve hours in the twenty-four. But I am convinced that this was mistaken diligence, and that I should have

profited more if I had read law four or five hours and spent some more hours in thinking it over and considering the principle it established, and the cases to which it might be applied. And I am satisfied, also, that it would have been much better for me if I had occasionally mixed in the society of ladies and of gentlemen older than the students. My thoughts would often have been more cheerful and my mind refreshed for renewed study, and I should have acquired more ease and self-possession in conversation with men eminent for their talents and position, and learned from them many things which law books do not teach. I suffered much and often from this want of composure and from the consciousness of embarrassment when I emerged from my seclusion and came into the social and business world."

He goes on to say that his reading in the office of a judge was not without its disadvantages, remarking:

"In the office of a lawyer in full practice the attention of the student is daily called to such matters, and he is employed in drawing declarations and pleas, special and general, until the usual forms become familiar to his mind, and he learns, by actual practice in the office, the cases in which they should be respectively used, and what averments are material and what are not. The want of this practical knowledge and experience was a serious inconvenience to me, and, for some time after I commenced practice, I did not venture to draw the most ordinary form of a declaration or plea without a precedent before me; and if the cause of action required a declaration varying in any degree from the ordinary money counts, or the defence required a special plea, I found it necessary to examine the principles of pleading which applied to it, and endeavored to find a precedent for a case of precisely that character. Nor was it so easy, in that day, for an inexperienced young lawyer to satisfy himself upon a question of special pleading. Chitty had not made his appearance, and you were obliged to look for the rule in Comyn's Digest or Bacon's Abridgment, or Viner's Abridgment, and the cases to which they referred; and I have sometimes gone back to Lilly's Entries and Doctrina Placitandi in searching for a precedent."

As we all know who are engaged in active practice, and as you have, no doubt, been taught in this law school, the old science of pleading, the study of which made such eminent lawyers, has given place to a system in my judgment far better; but reforms in the law, and in other things, are apt to have some accompanying disadvantages. The abolition of the study of pleading, except in its superficial outlines, has produced a carelessness and lack of accurate and close think-

ing at the bar that old practitioners look upon with regret. In Taney's young manhood he says :

"Strict and nice technical pleading was the pride of the bar, and I might almost say of the court, and every disputed suit was a trial of skill in pleading between the counsel, and a victory achieved in that mode was much more valued than one obtained on the merits of the case."

Young Taney attended the sessions of the General Court, under the advice of his preceptor, to watch the trial of causes and the arguments of counsel and try his apprenticed hand at reporting. He says after he came to the bar, when his experience was more mature, that he threw these reports into the fire, being satisfied, when he read them, "that no one was fit for a reporter who was not an accomplished lawyer." He advises against moot courts, taking the opinion of his preceptor, who thought them an encouragement to young men to argue with insufficient knowledge of the subjects they discussed. He says the danger is that the student will bring the habit with him to the bar, and

"he will sometimes find that it would have been better to have been silent than to have spoken. All the lawyers of Maryland, who have risen to eminence and leadership, were trained in the manner described and advised by Mr. Chase."

Here, again, I would venture to suggest that the character and temperament of the student should be considered. I cannot but think that moot courts are very excellent aids in stimulating inquiry, and what may, perhaps, be called, for lack of a better term, original research in the law. Competent jurists have complimented the arguments of law students delivered in the ancient Law Academy of Philadelphia, an institution founded for the express purpose of teaching the student and the young lawyer practical methods of conducting business, including arguments before the Supreme Court. There is, undoubtedly, however, a disadvantage to many a young man who, having a facility of speech and of constructing sentences, that when tested by their last analysis convey little or no meaning, has deceived himself and possibly others into the

notion that he was a forensic orator because of his achievements in bodies of this kind.

There were great lawyers in Maryland, as in Pennsylvania, in those early days. Mr. Taney speaks of Luther Martin, Philip Barton Key, John Thompson Mason, John Johnson, Arthur Shaaff, James Winchester and William Pinkney.

Listening to such men in action, and inspired by their success in a profession that requires first of all an absolute devotion to it, and an ambition for success not easily discouraged, after studying closely for three years, in the spring of 1799 he was admitted to the bar. He was still afflicted by nervousness, which, as I have said, never entirely left him. He attributes his misfortune to his delicate health, saying:

"That it was infirm from my earliest recollection; my system was put out of order by slight exposure; and I could not go through the excitement and mental exertion of a court, which lasted two or three weeks, without feeling, at the end of it, that my strength was impaired and I needed repose."

Acting upon the advice of his father, Mr. Taney settled in Calvert county and became a candidate for the General Assembly of Maryland, and was elected.

During the session of the legislature he was more often in general society, though he complains that a defective vision often made him feel awkward and uncomfortable lest he should be guilty of rudeness in not speaking to someone he knew.

When the session was over, he returned to the country and indulged himself with the reading of general literature and the enjoyments of the beauties of nature.

"When the weather permitted," he says, "I was always out, wandering on the shore of the river or in the woods, much of the time alone, occupied with my own meditations, or sitting often for hours together under the shade, and looking almost listlessly at the prospect before me. There was always a love of the romantic about me, and my thoughts and imaginings when alone were more frequently in that direction than in the real business life."

On the expiration of his term, Mr. Taney became a candidate again for the House of Delegates, as a Federalist, but was defeated and his prospects for political elevation for the time were ended. He then made up his mind to begin the

practice of the law at Frederick, and, in March, 1801, he took up his abode in that city. Frederick was a place of considerable importance, having mills and manufactories of different descriptions; and, as it was situated on the Cumberland Road, the great highway from Baltimore and the West, it was enlivened by the tide of travel. It required five years of residence before Mr. Taney achieved a practice sufficiently lucrative to make him independendent. He had as a fellow student at Annapolis, Francis Scott Key, whose name has been made famous as the author of "The Star-Spangled Banner." On January 7, 1806, Mr. Taney married his friend's sister, Anne Phebe Charlton Key; his marriage was in every way a happy one, Mrs. Taney being congenial in her temperament and accomplished in many ways.

One of Mr. Taney's important cases in his early practice was the trial of General Wilkinson, then Commander-in-chief of the United States Army, before a military court convened at Frederick. This was in the year 1811. Although General Wilkinson was personally unpopular and was prosecuted by the ablest counsel, he was acquitted. Mr. Taney was again a candidate of his party for the House of Representatives about the year 1812, but was again defeated. In 1816, however, he became a member of the State Senate, and achieved a fine reputation in that body.

In those days the feeling against slavery had not extended so far as in later times, but there was a strong feeling of antagonism against it. Naturally, there was much excitement in Maryland, a slave holding community, when the institution was attacked in public speech. A Mr. Gruber, a minister in good standing in the Methodist Church, preaching at a camp-meeting in Washington county to a large audience, of whom four hundred were negroes, in the course of his address is said to have remarked:

"Is it not a reproach to a man to hold articles of liberty and independence in one hand and a bloody whip in the other, while a negro stands and trembles before him with his back cut and bleeding," and he continued with other words equally offensive to the peculiar institution.

Mr. Gruber had come from Pennsylvania, and this fact aggravated his offence; he was indicted by the grand jury as intending to incite the slaves to insurrection, and when the case came for trial Mr. Taney appeared as his counsel. In a powerful address to the jury, he dwelt particularly upon the right of freedom of speech and argued successfully that Mr. Gruber had not gone beyond the limits of his constitutional rights. Mr. Taney's language in regard to slavery is significant in view of his famous utterances in later life:

"A hard necessity, indeed, compels us to endure the evil slavery for a time; it was imposed upon us by another nation while we yet in a state of colonial vassalage. It cannot be easily or suddenly removed, yet, while it continues it is a blot on our national character. Every real lover of freedom confidently hopes that it will effectually, though it must be gradually wiped away and earnestly looks for the means by which this necessary object may be best attained."

Mr. Gruber was acquitted.

Mr. Taney's reputation had now become great; he was retained in many important causes and his recognition grew as years went by; he was noted for his deference to the bench, and his exceeding courtesy and fairness towards his brother lawyers. Mr. Tyler tells an anecdote to indicate his lofty professional spirit. He was engaged in an ejectment cause, and it stood ready for trial when he noticed that his opponent was unprepared, his locations were wrong, and he would certainly lose his case irrespective of its merits if he went to trial. Thereupon he leaned over to his opponent and told him the fact.

Such chivalrous courtesy should mark every practitioner and he should stamp what is known as sharp practice wherever he meets it. The really great men of the bar have always risen far above sharp practice and petti-fogging methods.

As an orator, Mr. Taney seems to have relied only upon the strength of his arguments and the sincerity with which they were advanced. It is said of him that

"his language was always chaste and classical, and his eloquence undoubtedly was great—sometimes persuasive and gentle, sometimes

impulsive and overwhelming. He spoke, when excited, from the feelings of his heart, and as his heart was right, he spoke with prodigious effect."

In his dealings with the court, it was further remarked by the same authority, Mr. William Schley of the Baltimore Bar:

"that in taking exception to the adverse rulings of the court, he never cloaked a point, but presented it clearly and distinctly for adjudication by the court."

Does this not suggest a thought that should be impressed upon the minds of young men as they come to the bar; that their admission oath requires them to act "with all due fidelity to the court as well as to the client?" And does not fidelity to the court require an open, candid statement of the law, and of the facts to the best knowledge of the lawyer? And should he not feel it his duty to aid the court as far as he can by presenting his conclusions of law with the utmost fairness and without any conscious effort to color his formulas to meet the immediate cause he advocates?

The retirement of the great Luther Martin and the equally, though differently, great Pinkney, in the year 1823, left an opening at the Baltimore Bar, and Mr. Taney removed to that city.

Although a Federalist in politics, Mr. Taney could not bring himself to support the attitude of that wing of his party which found expression in the Hartford Convention during the War of 1812, and he supported the candidacy of General Jackson for the presidency in 1824. He had no political aspirations, but a man of his eminence could not fail to be a factor in political life under the conditions existing at that time in any state of the Union. He was not so well known beyond the boarders of Maryland as his great compeer William Wirt, but in his state, as has been said, he ranged with the most eminent of his profession. In 1827, upon the unanimous recommendation of the Baltimore Bar, he was appointed Attorney-General of Maryland. Causes of the more important kind in all branches of jurisprudence required his professional attention, but he seems to have been especially employed in matters of maritime law, in marine insurance, and

the volumes of reports exhibit his skill, notably as a special pleader.

Hitherto, we have dwelt upon the personal characteristics and professional acquirements of Mr. Taney, as a practicing lawyer, but the turn of events now brought him into history as a statesman. General Jackson became President of the United States in 1829, and owing to internal dissentions some of the members of his cabinet resigned. Mr. Taney's attitude during the War of 1812 subsequently gave him a political position which, together with his professional acquirements, had caused the President to offer him the appointment of Attorney-General of the United States. And upon his indicating his acquiescence, he was appointed to that exalted office in June, 1831. Hitherto, Jackson and Taney had had no personal acquaintance, but there sprang up between them at once a feeling of confidence and regard. At that time the President's attention had been drawn to the conduct of the Bank of the United States, an institution chartered by the general government situated in Philadelphia. This bank found it necessary to apply for a re-charter because by its limitations its original charter would expire in 1836.

In his first message to Congress, in December, 1829, the President drew attention to this fact and indicated a doubt whether the renewal should be granted if applied for by the stockholders. The bank had been created by Alexander Hamilton and had continued in existence, excepting in the interval between 1811 and 1816. It had been approved by Mr. Gallatin as of great public utility during Jefferson's administration, opposed as that great leader was to everything that tended towards centralization. As a result of the financial irregularities during the War of 1812 and the failure of the state banks to produce the proper means of arranging exchanges, the Congress of the United States, upon the report of Secretary Dallas, chartered a new United States Bank in 1816. As the story is told by Charles J. Ingersoll in his *History of the Second War between the United States and Great Britain*, the bank was carried by the Republican party. The Federalists voted against it, especially Daniel Webster,

Jeremiah Mason, and John Sergeant, who became, says Mr. Ingersoll, "its chief counsellors, advocates and agents."

It is evident that Jackson looked upon the United States Bank as the incarnation of what has come to be known as the money power and as inimical to our institutions. Whether this was the growth of experience and observation after he assumed the presidential chair, or as has been asserted, his fixed intention when he assumed the presidency, is only a matter of curious interest. Mr. Ingersoll says that the latter was his feeling, and that from the intimation of his first message, he never swerved, not that he was opposed to a United States Bank in itself, but to the bank as then constituted. Jackson was not alone opposed to the renewal of the National Bank charter, but also to the continuance of the high protective policy and to the internal improvements by the Federal Government, and upon these issues the battle was joined later between Mr. Clay and himself as the candidates of opposing parties for the presidency. "Three years of contest followed between the president of the bank and the President of the United States," after Jackson's declaration in his first annual message, notwithstanding the fact that Congress in both houses supported the bank and expressed disapprobation of its destruction. Two men more unlike than these two presidents, both in early training, education and natural disposition could hardly be found. Jackson, a man of the people, schooled in broader experience, shrewd, unhesitating, and with an iron nerve that upheld him in all his plans, a soldier, moreover, accustomed to direct and simple methods; while the president of the bank, Nicholas Biddle, was equally brave, equally shrewd, but with a temper and education and an environment very different from that of his antagonist.

Mr. Biddle was an eminent citizen of Philadelphia, sprung from a distinguished family and educated in all the accomplishments that distinguish a gentleman, a strikingly handsome person, an orator and a man of force. He was the friend and correspondent of the most distinguished men of his time. Mr. Ingersoll says of him:

"No American had such European repute, and Jackson's was the only one comparable and that far inferior to it."

With antagonists of this character and with an issue so great the battle was fought, and upon his success depended Jackson's re-election and upon his defeat depended the continued existence of the bank.

The defeat of Mr. Clay was overwhelming. Out of two hundred and eighty-eight votes he received but forty-nine, and General Jackson entered upon his second term as President of the United States with his enemy unhorsed and at his mercy.

For a time attention was directed from the bank issues by the Nullification Ordinance of South Carolina, but when, after Jackson's emphatic declaration warning the people of South Carolina of his determined purpose to maintain the authority of the Federal Government, the difficulty was adjusted by the passage of a new Revenue Bill introduced by Mr. Clay, Jackson and his Attorney General appeared to have been of one mind with regard to the continuance of the charter, and neither were men to relax their purpose. They looked upon the continuance of the bank as dangerous to our political institutions and as the exponent of a power not to be trusted. The next move was the removal of the government deposits that had been so long in the bank. First came the message recommending the sale of the seven millions of the stock of the bank, held by the United States; with it a recommendation to investigate whether the public deposits were safe in the bank's custody. In the House of Representatives a committee reported that in the hands of the bank the deposits might safely be continued and this resolution was adopted. Mr. Taney was deeply impressed with the necessity for withdrawing the deposits, and in August, 1833, wrote to the President expressing his opinion. He says in his letter:

"My mind has for some time been made up that the continued existence of that powerful and corrupting monopoly will be fatal to the liberties of the people, and that no man but yourself is strong enough to meet and destroy it; and that if your administration closes without having established and carried into operation some other plan for the collection and distribution of the revenue, the bank will be too strong to be resisted by any one who may succeed you. Entertaining these opinions, I am prepared to hazard

much in order to save the people of this country from the shackles which a combined moneyed aristocracy is seeking to fasten upon them."

Jackson answered:

"The United States Bank attempts to overawe us. It threatens us with the Senate and with Congress, if we remove the deposits. As to the Senate, threats of their power cannot control my course or defeat my operations."

And he continued at length, indicating, that if Mr. Duane, the Secretary of the Treasury, should decline to carry out his policy, he would transfer Mr. Taney from the Attorney Generalship in order that he might do so. It turned out as anticipated; the Secretary of the Treasury refused to withdraw the deposits and was removed by the President, Mr. Taney being appointed Secretary in his stead. He entered upon his duties in the Treasury Department on the 24th of September, 1833, and on the 26th gave the order for the removal of the deposits, at the same time notifying the various banks that they had been selected as depositories for the public money instead of the United States Bank. The consequences were immediate, and most painful; the loans and discounts of the banks amounting to more than seventy millions were immediately called in, the bank alleging that the loss of the deposits compelled it to this action. The state banks were compelled to the same course, and the paper currency being thus suddenly contracted, a vast train of financial difficulties resulted. A panic came upon the country unprecedented in its history.

"Commerce became embarrassed. Property became unsalable. The price of produce and labor was reduced to the lowest point. Thousands and tens of thousands of laborers were thrown out of employment; and many wealthy people were reduced to poverty. The friends of the bank were involved in common ruin with its enemies."

When Congress met in December, 1833, the President boldly accused the bank of a misuse of its powers, especially asserting that

"in violation of the express provisions of its charter, it had by a formal resolution, placed its funds at the disposition of its president, to be employed in sustaining the political power of the bank."

He then explains the appointment of the new Secretary and ascribes to the efforts of the bank "to control public opinion through the distresses of some and the fears of others," the panic that existed. Mr. Taney addressed a letter to the Speaker of the House of Representatives explaining his action. There was no doubt of his legal right to remove the public moneys, and the question to be answered related only to its expediency. The Secretary did not hesitate to place his opposition to the renewal of the bank's charter upon the ground of its great power, it being, said he,

"a fixed principle of our political institutions to guard against the unnecessary accumulation of power over persons and property in any hands. And no hands are less worthy to be trusted than those of a moneyed corporation."

Although the Senate stood by the bank in this last struggle, the House of Representatives supported the administration, and the renewal of the charter was refused. The policy of General Jackson, which as we have seen, was urged upon him by Mr. Taney, aroused opposition, respectable not alone from its numbers, but from the character of its representatives. Such names as Clay, Webster, Calhoun, McDuffie, Binney, Adams were strenuous in their opposition.

Taney's biographer sees nothing to criticise adversely in the conduct of the administration, and explains the evils resulting from the conflict with no little force, remarking:

"When a government has instituted a policy even of ultimate ruin, interests spring up under that policy, upon which thousands of fortunes depend, that must suffer in the transition to even a policy which only can save the country from destruction. Of all powers on earth, the money power is the most mighty, the most unscrupulous, the most craving, the most unrelenting, and the most sure to have devotees. It has not only bought individuals, but governments, and, in fact, the ruling majority of nations. And there is nothing so fatal to all that is great in man as the dominion of money. There is no more important civil achievement in the working of our Government than the overthrow of the bank of the United States." (Tyler, page 217.)

Having accomplished this prodigious work, Mr. Taney met the brunt of the opposition and was refused confirmation as Secretary of the Treasury, when near the close of the session

in June, 1834, his name was sent to the Senate. Thereupon he resigned, taking with him the approval of his own conscience, the earnest thanks of the president, and the denunciation of those who were opposed to his policy.

There can be little doubt now—that more than sixty years have rolled by since the fierce and embittered contest to which we have made reference—that Jackson and Taney were right in their opposition to the concentration of power in the great corporation which they slew; but, whether they were right or wrong, no one can fail to admire the strength and courage they showed. But at that time, in the face of distress and suffering resulting from the battle, there was a large body who looked upon Jackson as being little less than a madman, and Taney, to use Webster's expression, as his "pliant instrument." Taney's motives are thus set forth by himself:

"It was obvious to my mind, from the facts before me, that a great moneyed corporation, possessing a fearful power for good or for evil, had entered into the field of political warfare, and was deliberately preparing its plans to obtain, by means of its money, an irresistible political influence in the affairs of the nation, so as to enable it to control the measures of the government. It was evident, if this ambitious corporation should succeed in its designs, that the liberties of the country would soon be destroyed; that the power of self-government would be wrested from the people, and they would find themselves, at no distant day, under the dominion of the worst of all possible governments—a moneyed aristocracy. In this posture of affairs, full of peril and of the deepest interest to this great nation, I saw the gray-haired patriot now at the head of the government, who has so often breasted every danger in defence of the liberties of his country, once more prepared to plant himself in the breach, to defend his countrymen, at every hazard to himself, from the impending danger. I firmly believe and still believe, that the safety of the country depended on his prompt and decisive action. I had long, as one of his cabinet, advised the proceeding which he finally made up his mind to adopt. . . . It was impossible, in a crisis when the dearest interests of the country were at stake, that I would, without just disgrace, have refused to render my best services in its defence. I should have been unworthy of the friendship of the high-spirited and patriotic citizens who are now around me if I could have thought of myself and my own poor interests at such a moment."

With his rejection by the Senate in 1834 Mr. Taney retired for a brief while from public life, but in 1835 the resignation

of Mr. Justice Gabriel Duvall made a vacancy among the Associate Justices of the Supreme Court of the United States, and Mr. Taney's name was again sent to the Senate for this great office. It was an interesting fact that it was before Judge Duvall that Taney had argued his first case in the Mayor's Court of Annapolis, and now he found himself named as his successor. The Senate did not reject, but indefinitely postponed the nomination, so that it fell.

Chief Justice Marshall, after presiding over the court for thirty-four years—he having taken his seat on the bench at the February Term, 1801—died in the summer of 1835, and on the 28th of December of that year Mr. Taney was nominated to fill his place. Notwithstanding the opposition, led by Clay and Webster, his nomination was confirmed. It is interesting to know that Marshall himself had expressed a desire for his confirmation when named for the Duvall vacancy, thus giving evidence of his own appreciation of his successor's learning and character.

Of his career as Chief Justice, speaking of him strictly from a professional point of view, one cannot enlarge within the limits of an address. His opinions, says George W. Biddle,

> "contained in thirty-two volumes of reports, beginning with 11 Peters and ending with 2 Black, are distinguished by their clearness, learning, directness and firm grasp of the points discussed, and, when dealing with constitutional subjects, for sound and weighty reasoning, thorough acquaintance with the political history of the country, and for the close bearing of all contained in them upon the question under examination." (Political Science Lectures, Univ. of Michigan, 1889, p. 125).

Questions covering the whole range of jurisprudence were presented for consideration and argued at the bar of the court by men unexcelled in learning and ability—questions of far-reaching constitutional importance. Chief Justice Marshall had set up the landmarks upon the field of constitutional law which have rarely been moved by later decisions. So his successor, though differing at times in his point of view, continued the work of development and set stricter limits where necessary.

We shall glance at a few of his decisions. In the famous case of *Charles Rivor Bridge* v. *Warren Bridge*, 11 Peters, 420, the case had been argued before Chief Justice Marshall, but not then decided. The provision of the Federal Constitution prohibiting states from passing any law impairing the obligation of the contracts was interpreted. It was contended that an exclusive privilege had been granted to the Charles River Bridge, and, therefore, the Warren Bridge could not be erected, as the act of the Legislature of Massachusetts, authorizing the erection of the Warren Bridge, impaired the implied contract contained in the charter of the Charles River Bridge. But the Chief Justice held that public grants must be construed strictly, and that we cannot,

"by legal and mere technical reasoning, take away from them any portion of that power over their own internal policy and improvement which is necessary to their well-being and prosperity."

Mr. Justice Story, one of the most eminent men who have ever graced the American bench, and whose text-books have been for years manuals for students of law, dissented from the Chief Justice, and viewed with melancholy the tendency of the court. He was fearful lest the principle of the Dartmouth College case should be obliterated. But, says Mr. Biddle:

"Unless the luxuriant growth, the result of the decision in 4 Wheaton, had been lopped and cut away by the somewhat trenchant reasoning of the Chief Justice, the whole field of legislation would have been choked and rendered useless in time to come, for the production of any laws that would have met the needs of the increasing and highly developed energies of a steadily advancing community."

Another case in which Justices Story and McKinley dissented from a majority of the court was that of *Groves* v. *Slaughter*, where it was decided that the constitution of Mississippi was not self-enforcing, but required an act of the legislature to carry into effect its provision against the introduction of slaves into that state as merchandise for sale. Chief Justice Taney concurred with the majority of the court and gave this significant judgment, that it was for the states to decide for themselves alone whether or not they would allow

slaves to be brought within their limits from another state, either for sale or for any other purpose, and adding the thought that Congress could not control their action by any constitutional power. (15 Peters, 449.)

Another great case in which the opinion of the court, delivered by the Chief Justice, involving the ownership of certain land covered by the waters of the Bay of Amboy, in the State of New Jersey, decided that the title of the soil under navigable rivers remained in the ownership of the state as part of

"the prerogative rights annexed to the political powers conferred upon the original proprietary grantee of the crown, to which the state had succeeded, and did not pass as private property."

One of the great slave cases, if they may be so called, is that of *Prigg* v. *The Commonwealth of Pennsylvania*, 16 P. 539, wherein it was decided that the Act of Assembly of Pennsylvania of March 25, 1826, under which the plaintiff in error was convicted of kidnapping, was unconstitutional. In this case the Chief Justice dissented from the opinion of the court delivered by Justice Story, that the Congress alone had power to legislate on the subject of fugitive slaves. The facts of this case were these: Prigg, a citizen of Maryland, had kidnapped a fugitive slave in Pennsylvania and had restored her to her owner in Maryland. He was indicted for this in Pennsylvania, under a law which declared that the taking of any negro or mulatto by force from the state was a felony. The act provided a means whereby fugitive slaves could be returned legally, requiring a hearing before a magistrate, and this act had been violated by Prigg. When the case came before the court on the part of Prigg the Pennsylvania act was held unconstitutional, because the Constitution had provided that the remedy should be exclusive in Congress, and the states were prohibited from passing any law upon the subject. Chief Justice Taney, although concurring with the majority of the court, did not agree in this view of the powers of the states, holding that, so long as they did nothing to impair the law as enacted by Congress, there being no express condition, they could make any regulations they chose on the

subject. This was a case in which, while the entire court concurred in the conclusion that the act was unconstitutional, they differed widely in the reasons that lead them to this conclusion. The decision reached in this case led Congress to attempt later to meet some of the objections raised by the court by the famous Fugitive Slave law, passed in 1850; but the question can never be said to have been finally settled to the satisfaction of the people until the Civil War solved it for all time.

One of the greatest cases, in its far-reaching effects upon the commerce of the country, decided by the court in 1847, in which the opinion was delivered by Mr. Justice Wayne and concurred in by the Chief Justice, was that of *Waring* v. *Clarke*, 5 Howard, 441, which extended the maritime jurisdiction of the United States Court to the navigable rivers and the great inland waters, irrespective of the old English test of the ebb and flow of the tides. It may seem strange at this time that it should have been contended that rules governing the jurisdiction of admiralty courts upon the comparatively insignificant waters of the Island of Great Britain could be invoked to fetter the commerce of the Great Lakes or the Mississippi River. And yet there were strong dissents to the view taken by the majority of the court in this case. The decision in *Waring* v. *Clarke* was subsequently sustained and reaffirmed by the Chief Justice in the case of the *Genesee Chief*, where it was held by the Chief Justice that an act of Congress extending maritime jurisdiction was entirely constitutional.

It would be an unnecessary labor to attempt a critical review of Chief Justice Taney's great decisions during the first half of his term. So many subjects were embraced, so perspicuous were his judgments that each is worthy of separate consideration. The student must read them in the original reports for a thorough knowledge, and for one merely historical, he will find in Mr. Biddle's paper, already alluded to, and in Mr. Carson's History of the Supreme Court, a commentary that will repay his reading. Mr. Carson is not carried away by admiration for the successor of Judge Marshall, to

whom his unbounded admiration is paid, and it was no lightly expressed conviction which inspired this passage in his History.

"On the whole the work accomplished by Taney and his associates during the first fourteen years of his term, was quite as essential to the full realization of our welfare as a nation and an accurate appreciation of the true character of our government as any preceding epoch in the history of the court. It served to check excesses, to limit extravagancies of doctrines, to awaken and develop new powers, to moderate tendencies, to introduce contrasts and elements which in future years could be mingled and used for the preservation of the whole, as well as for the protection of each part." (Carson, History of the Supreme Court, 336.)

Twenty years had passed since Judge Taney had taken his seat on the bench, when, in 1856, the case of *Dred Scott* v. *Sanford*, 19 Howard, 393, was decided.

After the lapse of forty-two years it should be possible to approach the consideration of this famous decision with calmness and impartiality, but at the time of the decision there existed too tense a feeling between the pro-slavery and anti-slavery elements to permit an impartial judgment, and the consequence was a storm of abuse directed against the venerable Chief Justice, from which his whole career, lofty, brave and pure as it had been, should have defended him. This was an appeal by Dred Scott, a negro, from the decision of the Circuit Court of the United States for the District of Missouri. Scott had brought an action in the United States Court to establish the freedom of himself, his wife, and two children, claiming to be a citizen of the State of Missouri, thus showing the court's jurisdiction against the defendant, the administrator of his reputed master, who was a citizen of the State of New York. The defendant filed a plea to the jurisdiction of the court alleging that the plaintiff being a negro of African descent, whose ancestors had been brought to this country as slaves, was not a citizen of Missouri.

A general demurrer was filed to this plea, and sustained by the court, and the defendant required to answer over. The defendant then pleaded in bar, of the action that the plaintiff, his wife and children were slaves, and the property of the defendant.

At the trial the facts were agreed upon that, in 1834, Dred Scott was a negro slave, and belonged to Dr. Emerson, a surgeon in the Army of the United States, who took him to a military post at Rock Island, Illinois, and held him there till 1836 as a slave. Dr. Emerson then removed the plaintiff to Fort Snelling, north of 36° 30′ and north of the State of Missouri, where he held him as a slave till 1836.

In 1835, Harriet, a negro slave of Major Taliaferro, an officer in the army, was taken by her master to Fort Snelling, where she was held as a slave until 1838, having been sold in the meantime to Dr. Emerson.

In 1836, the plaintiff and Harriet, with the consent of Dr. Emerson, inter-married at Fort Snelling, and had two children, one born north of the north line of Missouri, and another within that state.

In 1838, Dr. Emerson removed the plaintiff and his wife and children to the State of Missouri where they have since resided. Before the commencement of the suit, Dr. Emerson sold the family to the defendant as slaves, and the defendant had ever since claimed them as such.

Previous to this action, Dred Scott brought suit for his freedom in the Circuit Court of St. Louis Co., and obtained a verdict and judgment in his favor, but on writ of error to the Supreme Court of the state, the judgment below was reversed, and the case remanded to the Circuit Court of the state to await the decision of this case. At the trial, the jury, under instructions from the court, found a verdict that the plaintiff, his wife and children were negro slaves, the lawful property of the defendant. Upon this verdict, judgment was entered for the defendant, and the plaintiff filed exceptions to the instructions of the court. Upon these exceptions the case came up on writ of error to the Supreme Court of the United States.

When the record reached the court, it presented two questions: 1. Whether Scott by reason of his African descent, irrespective of the question of his personal freedom, could be a citizen "of the States of the Union."

2. Whether the fact that Scott having been a slave in the state of Missouri, after being taken by his master to a free

state, and thence into that part of the Louisiana purchase, north of the parallel of 36° 30′, "where slavery was prohibited under the Act of Congress known as the Missouri Compromise Act, and then being brought back to the State of Missouri, was, in legal effect, emancipated by residence with his master in a free state or a free territory, so that the condition of servitude would not re-attach to him on his return into Missouri."

The first question was involved in the decison of the court in the plea to the jurisdiction. If the court below was wrong in sustaining the demurrer to this plea, and its action should be reversed, it would not be necessary to enter into any consideration of the merits of the case. The only necessary order would have been a mandate to the court below to dismiss the case for lack of jurisdiction. If, however, the court should hold with the court below that it was compatible with citizenship to be a negro of pure African descent, then the second question would have to be decided, whether residence such as had been held by Scott and his family in a free state, and in the Louisiana Territory, north 36° 30′ would entitle him to freedom.

The second question involved (a.) a consideration of the effect of the residence in a foreign state upon the status of a slave in Missouri, and, (b.) the right of Congress to prohibit slavery in any portion of the Territory of the United States as well as the effect of such prohibition upon the status of the slave in Missouri.

The case was first argued at the December Term of the Supreme Court in 1835, and it was then decided, in conference, that it would not be necessary to decide the question of Scott's citizenship under the plea to the jurisdiction, but that the case should be disposed of by an examination of its merits, *i. e.*, by deciding whether he was a freeman or slave upon the facts agreed upon by the parties under the plea in bar of the action.

The question to be decided in this view of the case was merely whether the removal of Scott, by the temporary residence of his master out of the State of Missouri, affected his status in that state. This question was already *res adjudicata* in Missouri, the Supreme Court having decided to the effect

that Scott's removal had not emancipated him,—a decision at variance with other decisions of the State Supreme Court, but the last one on the point.

Mr. Justice Nelson was assigned to write an opinion embodying this view of the case, which he did, JJ. Curtis and McLean dissenting. In commenting upon this opinion, George Ticknor Curtis says:

"The astuteness with which this opinion avoided a decision of the question arising out of the residence of Scott in a Territory of the United States, where slavery was prohibited by an Act of Congress, and the remarkable subtilty of the reasoning that this, too, was a matter for the state court to decide, because the law of the territory could have no extra territorial force except such as the State of Missouri might extend to it under the comity of nations, show very distinctly that, after the first argument of the case in the Supreme Court, it was not deemed by a majority of the bench to be either necessary or prudent to express any opinion upon the constitutional power of Congress to prohibit slavery in the Territories of the United States. It was said, in the opinion prepared by Judge Nelson, that even conceding for the purposes of the argument, that this provision of the Act of Congress is valid within the territory for which it was enacted, it can have no operation or effect beyond its limits, or within the jurisdiction of a state. . . . Our conclusion, therefore, is upon this branch of the case, that the question involved is one depending solely upon the law of Missouri, and that the Federal Court, sitting in the state and trying the case before us, was bound to follow it."

Mr. Curtis remarks very justly:

"If this view of the case had been adhered to by a majority of the court, no judge would have placed himself on record as holding that a free negro could not be a citizen, and therefore could not obtain a standing in the Circuit Court, and at the same time holding, under a subsequent plea to the merits, that he had no claim to freedom, because the Congress of the United States had no power to prohibit slavery in the National domain."

Shortly after the opinion of Justice Nelson had been written, and, of course, before it was promulgated, Justice Wayne proposed a re-argument of the case, and it was ordered for the ensuing term upon the two questions:

1. Whether, after plaintiff had demurred and the court had given judgment on the demurrer in favor of plaintiff and had ordered the defendant to answer over, and the defendant had

pleaded to the merits, the Appellate Court can take notice of the facts admitted in the record by the demurrer, so as to decide whether the court had jurisdiction to hear and determine the cause.

2. Whether or not, assuming the court is bound to take notice of the facts appearing upon the record, the plaintiff is a citizen of the State of Missouri within the meaning of the Judiciary Act of 1789.

"It will be seen that these questions," says Curtis, "in substance and in terms related to the facts set up in the plea to the jurisdiction, and to the power of the Appellate Court to act upon those facts after that plea had been overruled by the Circuit Court and the defendant had been ordered to plead to the merits, and on those facts set forth in the plea to the jurisdiction to determine the citizenship of the plaintiff. If the facts of Scott's African descent and the slavery of his ancestors set up in the plea to the jurisdiction could be rightly taken notice of in the Appellate Court, as admitted by the plaintiff's demurrer to that plea, and if it should be held that these facts amounted in law to proof that he was not a "citizen," then there was nothing that could in judicial propriety be done but to order the case to be dismissed for want of jurisdiction. But if it should be held that on these facts, assuming that the Appellate Court was bound to notice them, Scott was a citizen, within the meaning of the Judiciary Act, then, and only then, it would be necessary for the judge to act upon the merits of the case, and as a part of the merits to determine the constitutional validity of the Missouri Compromise restriction."

Unfortunately for the fame of the Chief Justice and of the court, one of its justices, Wayne, conceived the idea that the opportunity had come for the court to decide the question of the extension of slavery in the territories by deciding that Congress had no right to prohibit its introduction, and that the Missouri Compromise Act was null as beyond the power of Congress to enact. Chief Justice Taney and Justices Catron and Grier concurred in the views of Justice Wayne, and accordingly the Chief Justice wrote an opinion which, when promulgated, set the country in a flame. As analyzed by Mr. Biddle his opinion asserts the following propositions:

"1. A free negro of the African race whose ancestors were brought to this country and sold as slaves, is not a citizen within the meaning of the Constitution.

"2. The judgment of the Circuit Court was, therefore, erro-

neous, as it had no jurisdiction of the controversy between the parties.

"3. Scott was a slave. The law making the Territory of Wisconsin free territory is unconstitutional and void.

"4. The Missouri Compromise Act of March, 1820, is unconstitutional and void."

No one, with any knowledge of character, would question at this time the absolute integrity of motive on the part of the Chief Justice in rendering this decision, but fairness requires that we should pronounce it an error of enormous consequence—all the worse because committed by going outside the legitimate field of judicial decision. As Mr. Carson says:

"Without entering into technical niceties, it is perhaps sufficient to say that the general judgment of the profession, irrespective of the political question involved, is to the effect that the court after holding upon consideration of the plea in abatement that Dred Scott was not a citizen of the United States ought to have dismissed the case, without entering upon the consideration of the second question involved, and that in doing so they transcended the proper bounds of judicial authority and indulged in mere *obiter dicta* of no legal validity or conclusiveness."

And Mr. Biddle expresses the view

"that the Chief Justice in an anxious endeavor to carry out the views so often expressed by him as to the right of the individual states to deal exclusively with the subject of this domestic relation has been carried beyond the proper limitations within which it should have been confined." He bases his views upon this reasoning:

A. The plea in abatement simply raised the question whether a free person of African descent, whose ancestors were slaves, was a citizen entitled to sue. . . . Now it was shown by Curtis, J., his opinion that in several states, notably North Carolina, at the time of the adoption of the Constitution free negroes were citizens. Therefore the plea was bad.

B. The legislation by Congress, including the celebrated Act of 6th March, 1820, was justified by the Constitution. The article in question which the Chief Justice said applied only to the territory ceded by Virginia and some other states (Northwest Territory) had no such restricted meaning. This is clear.

1. By the history of the times. 2. By the inherent force of the words of the Article (Article IV, Section 3, paragraph 2). 3. By all fair and reasonable rules of construction, including contemporaneous construction.

C. Lastly the courts of Missouri had no right to disregard the law, and to reverse their original decisions, nor was the Federal

Supreme Court bound to follow the last decision of the highest court of this state under the circumstances presented."

While it is true that six of the eight Associate Justices of the Supreme Court concurred with the Chief Justice in holding that Dred Scott was a slave and that the judgment of the Circuit Court should be affirmed, each of these judges filed a separate opinion, and their views upon the various questions involved were for the most part very divergent. The great opinion on the Dred Scott case is not that of the Chief Justice, but that of Mr. Justice B. R. Curtis, of which Mr. Biddle says, "hardly too much can be said in praise of this masterly effort."

Justice Curtis having affirmed the ruling of the court below in favor of its jurisdiction, in sustaining the demurrer to the plea filed, which alleged that his African ancestry debarred Scott from citizenship, proceeded to show that while the question of the power of Congress was not legitimately before the court, under the view of the majority, yet as the court had jurisdiction in his view, he proceeded to consider the case on its merits. He shows by a powerful reasoning that the court below was wrong in its decision and that it should be reversed.

At this distance of time, with a new generation grappling with new issues, it requires an effort of the imagination to appreciate the enormous sensation caused by the Dred Scott decision. One of the counsel, a brother of Judge Curtis, in his memoir of his distinguished brother, gives his opinion as follows:

"The course of the majority of the judges in this case of Dred Scott precipitated the action of causes which produced our Civil War, and which would otherwise have lain dormant until the period of danger to the Union, arising out of the existence of slavery, had passed by . . . On the one hand, without the stimulus afforded by the 'decision,' there would have been no adequate cause for the formation in the Northern States of a geographical party with professed efforts aimed at the supposed predominance of the 'slave power' in the councils of the nation. On the other hand, without the new and unnecessary stimulus of this supposed 'decision,' Southern feeling in regard to the importance of a theoretical right to carry slaves into the territories must have died a natural death. . . . Thus a great misfortune, for which the people should not be blamed, because it was not

solely by the arts of demagogues or politicians that their confidence in the court was impaired. That confidence was impaired in the minds of men whom no arts of the demagogue or politician could reach. A vast majority of the legal profession throughout the whole North, and some of the best legal minds in the South, alike rejected the supposed decision and were alike dissatisfied." (Curtis, Life of B. R. Curtis, 197, 198).

Under such provocation attacks were made upon the Chief Justice of a character too outrageous to dignify by attempting a defence. The meanest, because of the artful way in which his language was presented, was that which attributed to him the sentiments that a negro "had no rights which the white man was bound to respect," when the context shows that he was endeavoring to state an historical fact to show the estimation in which the unfortunate race was held at the time of the adoption of the Constitution.

How grossly unjust it was to attribute unhumane sentiments to this venerable man, especially in his relations with the negro. Although born a slaveholder, he was so inimical to the system that he manumitted all of his slaves and took the warmest interest in their welfare. His professional abilities were freely given in the defence of their cause. He was even known to stop a child and help her with her bucket of water in the streets of Washington when he was in high position—and she but a slave, the child of a despised race.

Let us turn from this, the one great, most unfortunate episode in a career distinguished for usefulness and lustrous with examples, to be held up to the admiration of future generations. Let it be finally admitted, in the light of history, that, with intentions too pure and lofty to be doubted, six Justices of the Supreme Court committed an error, and with their chief must bear the responsibility to a greater or less extent. The majority went aside from the true path and fell into a pit. Their conclusions were riddled by the inexorable logic of Curtis and McLean, and served no other purpose than to make a solemn warning to their successors.

When the war broke out, the Chief Justice, now venerable with a great age, proceeded, amidst the heated excitement of the times and even in the clash of arms, to administer the

laws with a calmness and unchangeable dignity that extorted admiration even from his enemies. His stern determination to maintain the supremacy of the National Government in matters within its domain was exemplified in the case of *Ableman* v. *Booth*, 21 Howard, 506, where the Supreme Court of Wisconsin had decided that the Fugitive Slave law was unconstitutional and resisted its enforcement. In his opinion the Chief Justice observes :

"Now it certainly can be no humiliation to a citizen of a republic to yield a ready obedience to the laws as administered by the constituted authorities. On the contrary, it is among his first and highest duties as a citizen, because free government cannot exist without it; nor can it be inconsistent with the dignity of a sovereign state to observe faithfully, and in the spirit of sincerity and truth, the compact into which it voluntarily entered when it became a state of this Union. On the contrary, the highest honor of sovereignty is untarnished faith; and certainly no faith could be more deliberately and solemnly pledged than that which every state plighted to the other states to support the Constitution as it is, in all its provisions, until they shall be altered in the manner which the Constitution itself prescribes."

Such was the attitude of this great jurist on the question of the sovereignty of the National Government; but when the officers of that government exceeded their authority, not all the terror of military force could swerve him from rebuking the action.

In *Ex parte Merryman*, (Campbell's Reports, 246), a citizen of Baltimore was arrested in May, 1861, by a military force under order of Major-General Cadwalader, of the United States Army, and imprisoned in Fort McHenry. Upon petition of the prisoner a writ of *habeas corpus* was issued by Chief Justice Taney, sitting at chambers, directing the commandant of the fort to produce the body of the prisoner the next day. When the writ had been served, the officer made return declining to obey it, (1) because the petitioner had been arrested, by order of the Major-General commanding, on a charge of treason in being "publicly associated with and holding a commission as lieutenant in a company having in their possession arms belonging to the United States, and avowing his purpose of armed hostility against the government; (2) that the officer having the peti-

tioner in custody was duly authorized by the President of the United States in such cases to suspend the writ of *habeas corpus* for the public safety."

The Chief Justice held these reasons to be insufficient, and that the petitioner was entitled to be set at liberty. He issued an attachment for contempt against General Cadwalader; but when the marshal's returns showed that he could not serve the writ, and the evidently superior military force made it useless to summon the *posse comitatus*, he held the marshal excused and filed an opinion upon the facts and law of the case, showing that the writ could not be suspended without authority of Congress. As remarked by Mr. Tyler, in his biography:

> "There is nothing more sublime in the acts of great magistrates that give dignity to governments than this attempt of Chief Justice Taney to uphold the supremacy of the Constitution and the civil authority in the midst of arms. His court was open, and he sat upon the bench to administer the law. The cannon of Fort McHenry, where Merryman was imprisoned, pointed upon the city of Baltimore. But the Chief Justice, with the weight of eighty-four years upon him, as he left the house of his son-in-law, Mr. Campbell, remarked that it was likely he should be imprisoned in Fort McHenry before night, but that he was going to court to do his duty." (Tyler, 427.)

When we sit down in the quiet of our libraries to give a calm judgment upon the action of the Supreme Court in the case of Dred Scott, we shall see how, even the greatest, purest and most dispassionate men all unconscious to themselves, are influenced by their environment. The curse of slavery lay upon this country like a deadly blight, and it penetrated all classes of society in the South and warped the judgment of men whose interests were involved in the North. It is no reflection upon the great Chief Justice, nor upon any of his associates, to say that they were affected by the condition of the civilization then existing. They were men of conservative temperament and they well hoped that the fiat of the law would end the controversy. They were greatly mistaken. As Mr. Biddle says, in his criticism of the decision in the case of *Prigg* v. *The Commonwealth of Pennsylvania:*

"In truth the subject lay beyond the domain of legislative or judicial action. The feeling is so deep-seated in the hearts of men to comment upon unfavorably, and to prevent, if possible, the exercise of all authority distasteful to their passions or their prejudices, that it is impossible to reason with it, or even to contend against it, except by the exercise of physical force.

Especially is this so in free countries, and particularly in one where the general level of intelligence is high, and the means for concerted action abundant by reason of the ability for the almost instantaneous propagation of the thoughts and opinions of the general mass. In vain shall you attempt to appeal to the reason or patriotism of men thus aroused. You may demonstrate with unerring truth that the Constitution is incapable of more than one construction upon the point in question, and you may show with the clearness of the noonday sun that this construction favors the obnoxious practice. You may further prove from the history of the times, with an accuracy which admits of no challenge, that the compact by which the several states were fused into one united body would never have taken place without the concession which is found enacted into words in the instrument of union. You may talk of duty, justice, fairness, submission to the laws; but you talk against the wind in doing so. When men's passions are aroused they no longer reason. Passion is at one end of the line, reason at the other, and the latter is always outweighed by the former. Men simply rely upon their feelings as their principle of action; and especially do they do this when they can indulge in the luxury of gratifying these feelings without expense to their pockets. Adam Smith wrote, nearly a hundred years ago, that the resolution by which our ancestors in Pennsylvania set at liberty their negro slaves, must satisfy us that their number then could not have been very great in that state, and before making this statement he had demonstrated 'that the work done by slaves, though it appears to cost only their maintenance, is in the end the dearest of any kind of labor.'"

It is not my purpose, nor do I think it to be within the scope of a paper of this kind, to attempt to describe the private life of Chief Justice Taney, but it is necessary for a just appreciation of his character to know something of his habits of life. With the sincerity that was one of his most notable attributes, he carried out unostentatiously, but with perfect consistency, his conception of his duties towards Almighty God; never swerving from his faith in the Holy Roman Catholic Church. He obeyed its requirements down to the smallest detail. I have been told by one who often saw him in his declining years, that it was his custom to attend Mass

daily and his slight spare form was a familiar figure on the streets of Washington in the early hours of the morning on his way to and from his church. He was scrupulously exact in the performance of official duty, yet he was loved and reverenced by all his associates. It was said of him by a political opponent (Mr. Lamon),

"Chief Justice Taney was the greatest and best man I ever knew. I never went into his presence on business, that his gracious courtesy and kind consideration did not make me feel that I was a better man for being in his presence."

When in his eighty-eighth year, but a short time before his death, one of the members of his family asked him for a sentiment with his autograph, he chose the well-worn, but always impressive lines of Horace:

"Justum et tanacem propositi virum
Non civium ardor prava jubentium,
Non vultus instantis tyranni,
Mente quatit solida."

And surely they were descriptive of his own character; just and tenacious of his views, he could not be shaken by any threat from their defence when occasion required.

On the 12th of October, 1864, his illustrious career closed. I think from what has been said, you will need no words of eulogy to impress upon your minds the examples it has shown for the emulation not only of lawyers, but of all good men. It was said of him by a venerable jurist, Charles O'Conor, "I will not attempt the hopeless task of intensifying by mere words the strong emotions of affectionate and reverential regret for our great loss universally felt. Those who knew Chief Justice Taney, who witnessed in his administration of justice the gracious dignity of his bearing, and the stern impartiality of his judgment find in their own vivid recollections a voice with which mine cannot compete. Those who have not enjoyed that high privilege will gather from the perusal of his recorded decisions far better conceptions of his worth and intellectual greatness, than any mere eulogium could inspire."

Walter George Smith.

Philadelphia.